

GERMAN EUGENIC LEGISLATION IN PEACE AND WAR

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BEFORE war broke out two amendments had been made in the German Sterilization Law. By a law of February 4th, 1936, and an ensuing ordinance it became permissible to sterilize women, with their consent, by X-rays or radium instead of by surgical operation.

The other more important amendment, made on June 26th, 1935, permitted the removal of the genital glands of men, with their consent, if, in the opinion of a public health officer or a forensic physician, this operation was necessary to rid them of degenerate sexual desires from which further sexual offences might be feared. This provision did not affect the compulsory emasculation which could be imposed on dangerous habitual sex offenders by sentences of the criminal courts.* The amendment also settled the dispute on the admissibility of a sterilization which had been ordered by a eugenic Court's final decision, but which could not be performed without the termination of a pregnancy. It allowed sterilization and termination of the pregnancy with the pregnant woman's consent, unless the foetus was already viable or the termination of the pregnancy would entail serious danger to the woman's life or health. These regulations conform to the general lines of the sterilization law, i.e. to take the risk of losing normal progeny in order to prevent the birth of those who might be defective.

At the outbreak of war that trend changed considerably. From September 1st, 1939, both "Eugenic Laws" were to a large extent suspended. The sterilization law was henceforward applied only in so-called "urgent cases," i.e. those in which the risk of procreation was regarded as so serious that sterilization could not be postponed. The

local Public Health Office had to determine whether these conditions applied. Doctors and similar professional persons* had as before to notify all hereditarily diseased persons whom they encountered in the course of their practice, but the notifications were dealt with only in "urgent cases," the others being pigeonholed by the Public Health Offices. All procedures pending before the Eugenic Courts on September 1st, 1939, were suspended; only "urgent cases" at the special instigation of the Public Health officer went forward. Even sterilizations ordered by a court's final decision could be suspended, if the specially appointed surgeons were not available. On the other hand, in "urgent cases" sterilization had to be carried out, if necessary, by such doctors as could be relied on to perform it satisfactorily.

In a similar way the Marriage Health Law of 1935 was restricted to "serious cases." Since September 1st, 1939, the mere existence of one or more of the impediments specified by the law has no longer, by itself, warranted the refusal of the prenuptial-health certificate,† which now is refused only if specially serious damage to the German nation's health or the purity of German blood or a loss of specially valuable characteristics has to be feared. The prenuptial-health certificate has, however, never been generally compulsory. The date for its coming into force has not yet been fixed. Before the war the registrar had only to require it when he had serious reason to suspect the possibility of impediments, or when the Public Health Office (to which he has to notify all applications for the banns) suggested it for similar reasons.

Whenever a certificate was required, the local Public Health Offices had to make a

* EUGENICS REVIEW, 1934, 25, 183.

* *Ibid.*

† EUGENICS REVIEW, 1939, 31, 106.

special medical examination of the engaged couple. From September 1st, 1939, the Public Health Offices have had to ascertain from their records, on the registrar's notification, whether a hindrance is known to exist. If it is certain that the case is serious, the engaged parties receive, without any medical examination, information in writing to the effect that the prenuptial certificate is refused. A medical examination is only allowed and prescribed if the Public Health Office's records leave some uncertainty, but include facts which justify the suspicion of a serious case.

In the German Press there was recently some news about an ordinance of October 22nd, 1941, in terms of which, from December 1st, 1941, all engaged persons, with the exception of the members of the forces and similar units and bodies, must produce an *Eheunbedenklichkeitsbescheinigung* (Certificate of no objection to matrimony) to the registrar at the application for the banns, or at the latest before the marriage. This does not mean, as the German Press insinuated, any development towards the prenuptial-certificate provided by the original law. For the new certificate does not testify to the absence of impediments specified by the law, but states only that according to the records of the Public Health Office there is no objection to the proposed marriage. In reality the

new decree does not alter the conditions for the refusal, but only places the procedure, which was formerly carried through by the registrar and the Public Health Offices, in the hands of the engaged parties. Thus they are admittedly to be spared some surprises, such as were sometimes experienced if the overburdened registrar was slow in notifying the Public Health Office. Now the engaged parties themselves apply for the certificate, which the Public Health Office must hand over or post within ten days, if there is no suspicion of a serious case. In favour of fiancées of soldiers or similar persons the term is shortened to forty-eight hours if the fiancée calls personally at the Public Health Office, and to seventy-two hours if she applies by post. On the mere proof of the expiration of the shortened terms the registrar has to register the marriage, unless he has received other information from the Public Health Office in the meantime.

All the war regulations show that, apart from serious cases, the risk of defective progeny is taken in order not to lose any normal or slightly abnormal increase. That conforms to the present trend of German population policy, whose slogan* is more than ever

"The Command is now to breed."

* Slater, Eliot (1936), *EUGENICS REVIEW*, 27, 285.

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